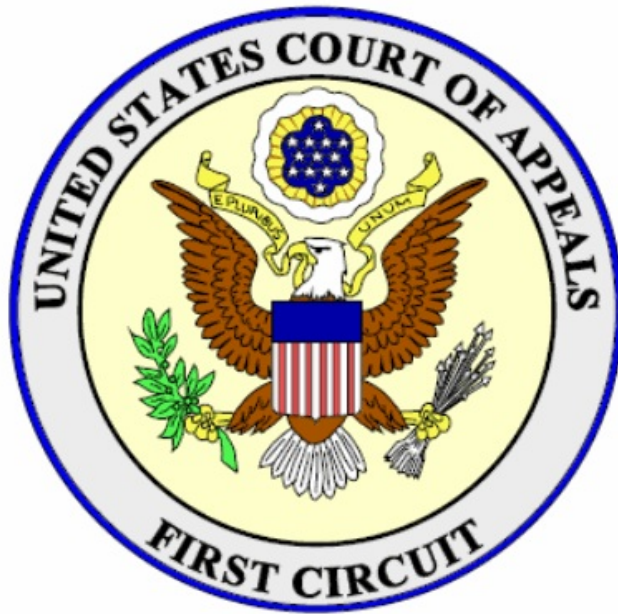


United States Court of Appeals

for the

First Circuit



CJA REFERENCE MANUAL

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In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

U. S . Constitution, amend. VI.

INTRODUCTION

This manual is designed to inform the CJA panels of the First Circuit of the policies and procedures that apply to appellate CJA vouchers in the First Circuit Court of Appeals. When this manual was prepared, the federal courts were preparing to transition to an electronic CJA voucher processing system. The policies and procedures stated here will be adapted to the electronic vouchering system once that transition is complete.

The policies and procedures set forth in this manual are intended to ensure that CJA panel attorneys are compensated for services rendered that are "necessary for adequate representation." See 18 U.S.C. § 3006A(a). It is further intended to provide reasonable assurance that public funds are protected from loss, waste, and abuse, and that defense services consistent with the best practices in the legal profession are provided in the most efficient and cost-effective manner.

The judges of the First Circuit Court of Appeals are grateful for the valuable public service provided to persons unable to afford representation by the dedicated CJA panel attorneys of the First Circuit.

I. General Principles

- A. Philosophy of the CJA.** The Criminal Justice Act (CJA) allows appointed counsel to be compensated for "time reasonably expended" and expenses "reasonably incurred." See 18 U.S.C. § 3006A(d)(1). The First Circuit greatly values the work of CJA panel attorneys. They make a substantial and important contribution to ensuring the Sixth Amendment right to counsel of indigent defendants throughout the Circuit. Service by CJA counsel necessarily represents a substantial measure of public dedication. See 1st Cir. Rule 46.5(c).
- B. Individual Appointments.** Courts appoint individual attorneys under the CJA, not law firms. However, the Administrative Office of the United States Courts permits CJA panel attorneys to report CJA income as law firm or corporation income rather than as the personal income of the attorney. Upon joining the First Circuit's CJA Panel, attorneys will receive an IRS Form W-9 to notify the court how payment should be reported to the IRS. Panel members must keep their payment and other contact information up-to-date. If there is any change in how income should be reported, counsel must notify the Clerk's Office CJA Liaison (Donna Barchard, 617-748-9061) before submitting a voucher.
- C. Prerequisites.** Appointed CJA counsel are expected to have a working knowledge of key cases and statutes, the Federal Rules of Criminal and Appellate Procedure, the Federal Sentencing Guidelines, local rules, CJA forms and instructions, and the "CJA Guidelines" (i.e., Volume 7 of the Guide to Judiciary Policy, Part A: Guidelines for Administering the CJA and Related Statutes). Excessive time billed for reviewing these authorities should be treated as non-billable overhead.
- D. Fee Waivers.** Appellate filing fees are waived for defendants allowed to appeal *in forma pauperis*. CJA panel attorneys are entitled to free PACER services for work on their CJA cases. Upon appointment to the First Circuit's CJA Panel, an attorney should contact the PACER Service Center (800-676-6856) to register for a free account for CJA work. Appellate CJA counsel are also entitled to a waiver of the First Circuit's bar admission fee.
- E. Voucher Review Process.** All vouchers are reviewed for mathematical accuracy, as well as technical compliance with each form's instructions, the CJA Guidelines, and local rules. The Chief Judge of the First Circuit has delegated the authority to approve vouchers seeking compensation within statutory limits to various administrative attorneys in the Circuit Executive's and Clerk's Offices. The administrative attorneys review the vouchers and their supporting documents and approve amounts under the statutory limits. Vouchers that exceed statutory limits are reviewed by administrative attorneys and sent with their supporting documents to the Chief Judge's judicial designee with a recommendation for payment.

If the court determines that counsel's voucher appears excessive, counsel will be provided with notice and an opportunity to respond to a proposed reduction. Such advance notice is not required if a voucher reduction is based on mathematical or technical errors. See CJA Guidelines, § 230.36(b).

II. Transition from District Court to Appeal

- A. In Forma Pauperis (IFP) Status.** Generally, a party who was determined to be financially unable to obtain an adequate defense in a criminal case in the district court may proceed IFP on appeal without further authorization, unless the district court determines otherwise. See Fed. R. App. P. 24(a).
- B. Continuing Responsibilities of District Court Counsel.** Whether defense counsel in the district court was either appointed or retained, district court defense counsel remain counsel on appeal until the **Court of Appeals** grants defense counsel leave to withdraw under 1st Cir. Rules 12.0(b) and 46.6(a). **A district court order allowing defense counsel to withdraw can not relieve counsel of his or her responsibility to represent the defendant on appeal.** If a defendant requests court-appointed counsel but has not already been granted IFP status, defense counsel must assist the defendant in filing a motion for leave to appeal IFP and accompanying Fed. R. App. P. Form 4 Financial Affidavit, in compliance with Fed. R. App. P. 24. Counsel should also assist the defendant in filing the necessary case opening forms required by the Court of Appeals (i.e., the Docketing Statement, the Form for Selection of Counsel on Appeal, the Transcript Report/Order Form, and any necessary CJA 24 forms).
- C. Motions to Withdraw.** District court counsel's motion to withdraw should be accompanied by a notice of appearance of replacement counsel or a completed Form for Selection of new counsel on appeal. For additional details, see 1st Cir. Rule 46.6. Once allowed to withdraw, district court CJA counsel may secure a voucher for the preliminary work necessary for the appeal by filing a motion for appointment *nunc pro tunc* to the date the notice of appeal was filed. If such a motion is allowed at the outset of an appeal, withdrawing counsel should **promptly** forward the case record to successor or substitute CJA appointed counsel. See § V.E., *infra* at 9-10, on payment of district court "carryover counsel" who represent a defendant only briefly on appeal.
- D. New CJA Counsel on Appeal.** Upon appointment, appellate CJA counsel will receive CJA Forms 20, 21, and 24 from the court (or in a capital case, CJA Forms 30, 31, and 24). The court expects counsel to be familiar with the instructions for completing all CJA forms, which are available at: <http://www.ca1.uscourts.gov/cja-forms-instructions>.

III. Current CJA Attorney Payment Rates

A. **Temporary Emergency Attorney Rates for Work Performed from September 1, 2013 through September 30, 2014:**

Non-Capital Cases: \$110/hour

Capital Cases: \$163/hour

B. **Non-Emergency Attorney Hourly Rates:**

<i>For Work Performed Before</i>	<i>Non-Capital Hourly Rate</i>	<i>Capital Hourly Rate</i>
1/1/2010 - 8/31/2013	\$125	\$178
3/11/2009 - 12/31/2009	\$110	\$175
1/1/08 - 3/10/2009	\$100	\$170

C. **Attorney Non-Capital Appellate Case Compensation Maximums:**

<i>For work completed on or after January 1, 2010</i>	
Felony, Misdemeanor, Civil Asset Forfeiture, and 28 U.S.C. §§ 2254 & 2255 Appeals	\$6,900
Supervised Release Revocation, Crack Amendment, and Resentencing Appeals	\$2,100*
Material Witness Appeals and Appeals in Other Representations Authorized by the CJA	\$2,100*

* for each level of appeal. See CJA Guidelines, § 230.23.20(i).

Tip: Appointment of counsel is discretionary in 28 U.S.C. §§ 2254 and 2255 appeals and in crack cocaine amendment appeals under 18 U.S.C. § 3582(c)(2). CJA attorneys that were appointed in the district court should promptly file a motion for reappointment on appeal to clarify their status.

D. Mileage Rates

Effective Date	Rate Per Mile
January 1, 2013	\$0.565
April 17, 2012	\$0.555
January 1, 2011	\$0.510
January 1, 2010	\$0.500
January 1, 2009	\$0.550
August 1, 2008	\$0.585
March 19, 2008	\$0.505

IV. Filing CJA 20 and CJA 30 Vouchers

- A. When to Submit.** Generally, counsel must submit CJA vouchers within 45 days of final disposition of the case, unless good cause is shown for delay. “Final disposition” of a case on appeal is either the date a petition for certiorari is filed, or the date appellate counsel, having determined (and notified appellant) that such a petition would be frivolous, is allowed to withdraw. See 1st Cir. Rule 46.5(c).
- B. How to Submit.** Until the conversion to electronic vouchering is complete, paper CJA vouchers submitted to the First Circuit Court of Appeals should be directed to:

Donna Barchard, CJA Liaison
Clerk's Office
First Circuit Court of Appeals
John Joseph Moakley United States Courthouse
1 Courthouse Way - Suite 2500
Boston, MA 02210

- C. What to Submit.** CJA vouchers must be supported by contemporaneous time and expense records (e.g., a supporting diary, worksheets, or bills) which should be typed. Attorneys are encouraged to use the fillable worksheet forms found on their respective district court's websites. The First Circuit Court of Appeals accepts the worksheet forms of any of its district courts. Links to voucher worksheets currently in use in the First Circuit can be accessed as follows:

Massachusetts: <http://www.mad.uscourts.gov/attorneys/cja-info.htm>

New Hampshire: <http://www.nhd.uscourts.gov/ac/cja-panel/reference%20manual.asp>

Maine: <http://www.med.uscourts.gov/forms-instructions>

Rhode Island: <http://www.rid.uscourts.gov/> (go to Attorney - CJA Resources)

The District of Puerto Rico employs an electronic vouchering program. Appellate CJA panel attorneys from Puerto Rico and other districts may use the worksheets of any of the other four districts to support their vouchers.

- D. Content (Voucher Supporting Documents).** Worksheets or bills supporting CJA vouchers must include the dates that services were performed, the name and role of each service provider, and a brief description of the tasks performed and the time required for each task. If more than one attorney worked on an appeal, the tasks performed and time billed by each attorney must be identified. Until further notice, time must be billed in tenths of an hour. Block-billing (i.e., the listing of multiple tasks under a single time entry) is not allowed. Time billed for legal research and writing should identify the issues researched. Other task descriptions should be sufficient to enable the voucher reviewer to determine whether the services and time billed were reasonable and necessary for the appeal. Failure to provide sufficient information to permit meaningful review of a claim may result in delay or denial of approval. Vouchers may be returned for correction of non-compliance with technical billing requirements.
- E. Court Filings (Additional Supporting Documents).** Vouchers must be accompanied by a copy of any petition for a writ of certiorari that was filed, a CJA Form 27 or memorandum in support of excess compensation (if applicable), receipts for **all travel expenses**, and receipts for all non-travel expenses over \$50.00. Credit card statements are generally insufficient because they lack the detail required to ascertain whether non-billable charges have been included, particularly for travel-related expenses. If the voucher contains any unusual non-travel expenses over \$500 or is submitted late, counsel should also submit an explanation.
- F. Duty to Keep Contemporaneous Records.** CJA counsel must maintain contemporaneous time and expense records for all work performed, including work performed by partners, associates, and support staff (including any contract attorneys hired with advance authorization). Such records must be maintained for three years after approval of the final voucher. Any overpayments are subject to collection, including deduction of amounts due from future vouchers. See CJA Guidelines, § 230.76, CJA Form 20 Instructions, ¶ 3.
- G. Excess Compensation Claims (CJA 20s only).** If a compensation request (excluding expenses) exceeds the applicable statutory maximum, counsel must submit a concise memorandum or a completed CJA 27 form explaining why (1) the appeal was extended or complex, (2) excess payment is necessary to provide fair compensation, and (3) the total time and expenses billed were “reasonable and

necessary” for the particular appeal.

An appeal is "extended" if more time is reasonably required for total processing than the average appeal. An appeal is "complex" if the legal or factual issues in a case are unusual, thus requiring the expenditure of more time, skill and effort by the lawyer than would normally be required in an average case. See CJA Guidelines, § 230.23.40(b).

Courts generally consider the following factors in determining whether payment in excess of the CJA statutory maximum is necessary to provide fair compensation for an appeal:

- ▶ whether the appeal is from a trial, guilty plea, habeas case, supervised release revocation, or an "other representation" required or authorized by the CJA, see CJA Guidelines, § 230.23.20(i);
- ▶ the size of the transcript (number of pages and trial days, if applicable);
- ▶ the description and length of other record materials reviewed;
- ▶ hours claimed for legal research and writing, identifying each issue researched plus:
 - ▶ number of issues and pages in each brief;
 - ▶ whether any appellate issues were briefed in the district court, and if so, what additional work was required on appeal; and
 - ▶ whether oral argument was required;
- ▶ whether the appeal presented any novel or complex legal issues or complex facts;
- ▶ the magnitude and precedential importance of the case, and whether the appeal was resolved with a published or unpublished decision;
- ▶ the length and number of issues in any petition(s) for rehearing and/or certiorari;
- ▶ any issues researched but not briefed; and
- ▶ the manner in which duties were performed, and the knowledge, skill, efficiency, professionalism, and judgment required of and used by counsel; the nature of counsel's practice and any hardship or injury arising from the representation; and any extraordinary pressure of time or other factors under which services were rendered.

See [CJA Form 27](#).

- H. Interim Vouchers.** Interim payments are not favored in appeals, which generally conclude in less time than district court cases. Before undertaking to submit an interim voucher, counsel must file a motion for interim payment that shows that the appeal is extended or complex and that an interim payment is necessary to avoid financial hardship. See CJA Guidelines, § 230.73.10. If the motion is allowed, counsel generally will be allowed to submit one interim voucher and one final voucher at the conclusion of the appeal.
- I. Petitions for Certiorari.** Appellate CJA counsel's time and expenses involved in the preparation of a petition for a writ of certiorari are considered applicable to the case before the First Circuit Court of Appeals and should be included on the voucher for services performed in this Court. See CJA Guidelines, § 220.25(b). Under the First Circuit's CJA Plan and 1st Cir. Rule 46.5, appellate CJA counsel has an obligation to file a petition for a writ of certiorari if the defendant loses the appeal and wishes to apply for certiorari, **unless such a petition would be frivolous**. If counsel concludes that there are no reasonable grounds for filing such a petition, counsel should file a motion to withdraw **early** in the 90-day period for seeking certiorari in case the court disagrees with counsel's assessment. See 1st Cir. Rule 46.5(c). Vouchers are due within 45 days of the final disposition of an appeal unless good cause is shown. See CJA Guidelines, § 230.13. For purposes of submitting an appellate voucher, the "final disposition" of a case on appeal is either the date a petition for certiorari is filed or the date appellate counsel, having determined and notified defendant that such a petition would be frivolous and of the deadline for filing a petition, is allowed to withdraw. See 1st Cir. Rule 46.5(c).

V. Appointed Counsel's Compensation and Expense Claims

- A. Generally.** Appointed counsel are encouraged to use lower-billing partners, associates, contract lawyers, paralegals or other means to minimize costs where lead attorney expertise may not be required. Appointed CJA counsel may claim compensation for services furnished by a partner or associate, or with prior authorization by the court, a contract attorney, within the single statutory maximum allowed to appointed CJA counsel. The documents supporting the voucher must separately identify the provider of each service. Extra work resulting from the division of labor is not compensable. Only appointed CJA counsel may bill for time conferencing with subordinate attorneys.

B. Definitions. A **partner** is an attorney with whom CJA appointed counsel practices in an ongoing formal business relationship in which the partners or shareholders share receipts and expenditures. An **associate** is an attorney who is employed by CJA appointed counsel or counsel's law firm, is provided with office space and general supervision, and whose overhead expenses and payroll taxes must be met by CJA appointed counsel or counsel's law firm. Ad hoc and space-sharing arrangements, (e.g., arrangements in which expenses but not revenues are shared), do not qualify attorneys for partner or associate status. A **contract attorney** is any attorney who does not qualify as the CJA panel attorney's partner or associate.

C. Rates. The following rebuttable presumptive rates apply to partners, associates, and contract attorneys:

- ▶ Panel Members: \$90/hour
- ▶ Non-Panel Members: \$80/hour

Not every provider will warrant the full rate, but special circumstances, e.g., a special skill or knowledge, might warrant a higher rate.

D. Prior Authorization. Subject to the limitations noted below, advance authorization usually is not required for appellate CJA counsel to utilize partners and associates in non-capital appeals. See CJA Guidelines, § 230.53.10(b). However, appellate CJA counsel **is required** to file motions for permission to hire a contract attorney to perform any work on an appeal. The motion must identify the contract attorney's name, level of experience, proposed hourly rate of compensation, projected number of hours, and tasks to be performed.

Exception: Appellate CJA counsel *must* seek advance authorization to bill for partners and associates to appear at oral argument or client conferences with CJA counsel. Although advance authorization is not required for additional counsel to attend these events at no cost, such attendance will not be compensated absent advance authorization. The same rule applies to contract attorneys.

E. Substitution of Counsel. If a CJA attorney is substituted for a previous CJA attorney appointed in the same case, the total compensation paid to both attorneys may not exceed the statutory maximum for one defendant, unless the case involves "extended" or "complex" representation and, therefore, merits compensation in excess of the statutory maximum. In such cases vouchers for both attorneys generally will not be approved until the final disposition of the appeal so that the court may make such apportionment between the attorneys as may be just. See CJA Guidelines, § 230.56.

Exception: District court counsel who represent a defendant only briefly on appeal (i.e., "carryover counsel") may submit vouchers up to \$1,000 (excluding expenses) upon confirming that they have forwarded the case

record to substitute appellate counsel. These vouchers will be processed promptly and need not be preceded by a motion for interim payment.

Absent a motion showing good cause for an interim payment, carryover counsel seeking compensation over \$1,000 (thereby increasing the likelihood that the case will exceed the statutory maximum) may not submit vouchers until the final disposition of the case. Vouchers for carryover and substitute appellate counsel will be considered together so that the court, "may make such apportionment between the attorneys as may be just." Id. If the total claims for compensation exceed the statutory maximum, counsel submitting the higher voucher must submit a memorandum in support of excess compensation.

Tip: To keep apprised of when final disposition has occurred, withdrawing counsel should sign up to receive Notices of Docket Activity (NDAs). See First Circuit CM/ECF User's Guide, p. 39. Late vouchers are not favored. Carryover and substitute counsel should make every effort to submit their vouchers simultaneously and as soon as possible after the final disposition of the case. If simultaneous submission is not possible, the first attorney submitting a voucher should inform the court whether and when the other attorney is expected to submit a voucher.

F. Time Spent on Ancillary and Other Matters Unrelated to Appeal. Time spent on district court matters, or other matters unrelated to appellate representation, even if incidental to arrest and incarceration, is not compensable on an appellate voucher. Prior court approval is required before appellate CJA counsel undertakes any work on "ancillary matters" for which compensation will be sought under CJA Guidelines, § 210.20.30.

Tip: Compensation for preparation and submission of the notice of appeal and any CJA 24s filed in the district court should be claimed on the district court voucher. Compensation for appellate court filings made after the filing of the notice of appeal should be claimed on the appellate voucher.

G. Overhead. Costs associated with general office overhead have been factored into the attorney's hourly rates and are not separately reimbursable. Absent extraordinary circumstances, time spent on secretarial or clerical tasks typically performed by nonprofessional staff is not billable, even if the tasks were performed by a lawyer or paralegal and even if counsel does not employ a secretary. Similarly, personnel, rent, and monthly telephone service costs are not reimbursable. See CJA Guidelines, § 230.66.

Appointed counsel also should not bill for the time it takes to prepare to submit a voucher for payment, a memorandum in support of an excess compensation claim, or a motion for interim payment. Time spent reviewing the Electronic Learning Modules (ELMs) to enable an attorney to submit electronic filings through CM/ECF is also considered non-compensable overhead. Costs associated with educational seminars, books, publications, flat fee computerized research plans, office supplies, and equipment are also generally not reimbursable.

VI. Travel and Travel Expenses

- A. Generally.** Appellate CJA counsel may incur travel time and expenses to appear in court for oral argument and/or to visit an incarcerated appellant. The following rules apply to CJA-related travel in appeals.
- B. Travel Time.** Appointed counsel's necessary and reasonable travel time is compensable, but professional time spent on non-professional tasks (e.g., traveling to the court, post office, or copy companies to submit or retrieve briefs, appendices, etc.) is not compensable. Overnight lodging expenses for oral argument are permitted only if more than 50 miles of travel (one-way) is required. See also ¶ C, *infra*.
- C. Multi-Purpose Travel.** Double billing is prohibited. Travel *time* spent in common on more than one CJA representation must be prorated, but the travel *expenses* associated with the trip must be billed to only one voucher. The supporting materials to the vouchers must explain the method of billing and cross-reference the cases. See CJA Guidelines, §§ 230.50(d),(f).

If an attorney is submitting a claim under the CJA for time (or expenses), including travel that was spent in common for CJA and non-CJA purposes, the attorney must report such information to the court and explain the rationale for billing all or part of the time (or expenses) under the CJA. See CJA Guidelines, § 230.50(g), CJA 20 Instructions, Item 16.

- D. Government Travel Rates.** Under Section 702 of the Federal Courts Administration Act of 1992, Public Law 102-572, 106 Stat. 4506, 4515, government travel rates at substantial reductions from ordinary commercial rates may be available from common carriers and hotels for travel authorized by the court in connection with representation under the CJA. Attorneys and experts who require overnight travel to carry out their responsibilities under the Criminal Justice Act must obtain advance travel authorizations from the court to take advantage of these rates. Attorneys and experts who elect to make their own travel arrangements will be reimbursed only for their actual costs up to the applicable government rate.
- E. Overnight Travel.** Overnight travel requires prior court authorization by motion made at least two weeks in advance. **Exception: Puerto Rico attorneys who must appear in Boston and stateside attorneys who must appear in Puerto Rico for oral argument need not file motions for travel authorization.** Compensable travel time includes only those hours actually spent in or awaiting transit. If a trip necessarily and reasonably requires overnight lodging, compensable travel time from the claimant's office or home (whichever is shorter) terminates upon arrival at the place of accommodation. Similarly, travel time for the return trip should be calculated from the time of departure from the destination

to the time of arrival back at counsel's office or home.

Reasonable expenses for lodging and meals will be reimbursed on an actual expense basis. Because the CJA authorizes reimbursement only of actual expenses, **CJA travelers may not claim government per diem rates.** Meals are only reimbursable when overnight lodging is required. Receipts for meals must be sufficiently detailed to establish that reimbursement is not being sought for charges that are not compensable under the CJA (e.g., charges for persons other than CJA appointed counsel, alcoholic beverages, etc.). Expenses not properly documented may be disallowed.

- F. Prudent Traveler Rule.** CJA counsel are expected to follow the "prudent traveler rule" and to exercise the same care in incurring expenses that a prudent person would exercise conducting personal business using his or her own money. Excess costs, circuitous routes, and services unnecessary or unjustified in the performance of official business are not acceptable. Counsel will be responsible for any additional expenses incurred for personal preference or convenience. See Guide to Judiciary Policy, Vol. 19, Ch. 4, § 410.40.10.
- G. Travel Expenses.** Travel expenses incidental to the representation must be itemized on a separate sheet, indicating the date the expense was incurred. Mileage for travel by privately-owned automobile should be claimed at the rate in effect for federal employees at the time of the travel. Mileage claims must specify the starting location, the destination, and the number of miles traveled.
- H. Non-Reimbursable Travel Expenses.** The costs of the following items are never reimbursable and should not be claimed on attorney or service provider vouchers:
- ▶ alcoholic beverages
 - ▶ entertainment-related expenses (e.g., movies, magazines, books, etc.)
 - ▶ parking fines or fees for traffic violations
 - ▶ personal expenses (e.g., laundry service, accident insurance, personal effects coverage, etc.).

VII. Other (Non-Travel) Expenses.

- A. Generally.** Claims for other expenses must be itemized by date and charge reported on the documents supporting the voucher. Receipts are required for all non-travel related expenses exceeding \$50.00. Credit card statements alone may not have sufficient detail to enable payment of the expense. Expenses not properly documented may be disallowed.
- B. Copying.** Photocopying charges may not exceed \$.10 per page and must be supported by an explanation of the items copied. Appellate counsel may use the procedures outlined in the First Circuit's "Guidance on Using CJA Form 21 for Duplicating Services" to obtain direct payment to copy companies for reproduction of their appellate briefs and appendices, *available at* <http://www.ca1.uscourts.gov/cja-forms-instructions>. A motion for approval is required if counsel anticipates that the cost of reproduction of the brief and appendix will exceed \$800.

Tips: CJA counsel will be required to bear any additional costs associated with resubmitting corrected briefs and appendices where counsel failed to follow court rules initially.

The cost of *printing* briefs and other appellate filings is not reimbursable. The cost of photocopying is reimbursable. See CJA Guidelines, § 230.66.40.

- C. Computer Assisted Legal Research (CALR).** Appointed counsel's use of computer assisted legal research services may be allowed as a reimbursable out-of-pocket expense, provided that the amount claimed is reasonable. Counsel should attach a copy of the bill and receipt for the use of the service and explanation of the precise basis of the charge (e.g., indicating the extent to which it was derived by proration of monthly charges or by charges identifiable to the specific research). If the amount claimed is more than \$500 or includes costs for downloading and printing, counsel should include a brief statement of justification. See CJA Guidelines, § 230.63.30.
- D. Postage/Expedited Mail/Courier.** Counsel are encouraged to minimize the use of costly express delivery services and to submit paper briefs and related filings by U.S. mail. Single-event postage, expedited mail, and courier expenses exceeding \$50.00 must be supported by itemized receipts that specify the date, nature of service, and cost.

VIII. Experts and Other Service Providers on Appeal

- A. Generally.** Service providers other than CJA appointed counsel in appeals before the First Circuit tend to fall into the following categories: paralegals (either freelance or employed by appellate CJA counsel's law firm), law students (either

paid or unpaid), duplicating service companies, and interpreters and/or translators. Service providers generally should be compensated through CJA forms 21 or 31, not as expenses on counsel's CJA 20 or 30 voucher. Service providers must maintain contemporaneous time, attendance, and expense records for three years after approval of the final voucher in the representation. All payments are subject to post-audit. Any overpayments are subject to collection, including amounts due from future vouchers.

B. Limitations.

\$800 Per Case Limit for Non-Preauthorized Services. The CJA, 18 U.S.C. § 3006A(e)(2)(A), allows appointed counsel to obtain a total of **\$800 per case (excluding expenses)** in expert and other services without prior court authorization, but subject to "later review" for reasonableness. Absent prior court authorization, service provider costs over \$800 will only be approved upon a showing that timely procurement of necessary services could not await prior authorization. Because this showing is difficult to make in an appeal, appellate CJA counsel are encouraged to obtain prior authorization for the total anticipated cost of each type of service provider, including paralegals employed by CJA counsel's law firm.

\$2,400 Non-Capital Statutory Maximum per Service Provider. A \$2,400 statutory maximum (**exclusive of expenses**) applies to each organization or individual service provider used in an appeal. Services in excess of this amount must be justified with a showing that the excess is necessary to provide fair compensation for services of an unusual character and duration. See 18 U.S.C. § 3006A(e)(3).

C. Hiring Service Providers. Once funding for a service provider has been approved, counsel is responsible for communicating with the service provider to ensure compliance with specific terms of the court order. Counsel should ensure that service providers efficiently perform their assigned tasks and do not exceed authorized expenditures absent court approval. Service providers must **fully** complete the CJA 21 or 31, items 16-17 (Claim for Services and Expenses & Claimant's Certification) **before** submitting the form to the attorney to certify that services were rendered and received. Appointed counsel may not sign the certification statement required by the CJA 21 or 31, item 18, until the services have been completed, the provider has submitted a completed CJA 21 or 31 to counsel, and counsel has reviewed the billing information. Appointed counsel should sign boxes 17 and 18 to certify paralegal services provided by counsel's law firm.

D. Paralegals and Law Students. The First Circuit Court of Appeals applies a rebuttable presumptive maximum rate of \$35-\$50/hour for paralegal services. Not all paralegals will qualify for maximum rates. Paralegal time must be billed on the CJA 21 or CJA 31 forms, even if the paralegal is employed by appellate

CJA counsel's law firm. The \$800 limitation on non-preauthorized services applies to paralegals employed by counsel's law firm.

Law Students. Law students receiving course credit for their CJA work may not be compensated under the CJA. Law students are otherwise subject to the same rebuttable presumptive maximum that applies to paralegal rates (i.e., \$35-\$50/hour). Not all law students will qualify for maximum rates.

- E. Interpreters and Translators.** Interpretation of oral communication may be claimed at a rate not in excess of \$55 per hour (for certified interpreters) or \$32 per hour (for non-certified interpreters). Certification is not required for interpreters used in appeals, where interpreting is limited to out-of-court conferencing. Translations may be reimbursed at the rate of \$.165 per word.¹

Contract court interpreters must submit the following information with each voucher: (a) the times of day for which services are being billed; and (b) the number of other vouchers or claims submitted, or to be submitted, for interpreting services provided on the same date for a CJA representation or for a federal court unit, and times of service applicable to other vouchers or claims. See CJA 21 Instructions, Item 16.

- F. Duplicating Services.** See **Copying**, supra at p. 13.

IX. Capital Cases

- A. Generally.** The First Circuit sees very few capital appeals. Accordingly, this manual highlights only the major distinctions between capital and non-capital representations on appeal. Further guidance is available in the CJA Guidelines, Chapter 6 (Federal Death Penalty and Capital Habeas Corpus Representations).
- B. No Attorney Case Compensation Maximum.** Unlike non-capital cases, there is no statutory maximum for attorney compensation in capital cases, however attorneys remain subject to a reasonableness standard.

¹ As used in this manual, "interpreting" is the *oral rendition* of spoken words or written text from one language into another. "Translating" is the *written rendition* of written text from one language into another. See *Taniguchi v. Kan Pacific Saipan, Ltd.*, 132 S. Ct 1997, 2004-2005 (2012). Not all interpreters are translators, and not all translators are interpreters. The federal interpreter certification test administered by the Administrative Office of the United States Courts does not test translation skills. Translators can be located through the American Translators Association (www.atanet.org) and the National Association of Judiciary Interpreters and Translators (www.najit.org).

C. Prior Authorization Required for Partners and Associates. As noted above, non-capital appeals do not require appellate CJA counsel to obtain prior authorization to use partners or associates (unless to appear with CJA appellate counsel at oral argument or client conferences). In contrast, appellate CJA counsel in capital appeals are required to obtain prior court authorization to use the services of attorneys who work in association with them. The employment of such additional counsel must be at a reduced hourly rate and must diminish the total cost of the representation or be required to meet time limits. See CJA Guidelines, § 620.10.10(c).

D. Service Providers in Capital Appeals.

Non-Preauthorized Services: The \$800 limit on non-preauthorized services applies in capital, as well as in non-capital, appeals. See CJA Guidelines, § 660.10.40.

Per Case Statutory Maximum: A total of **\$7,500 per case** can be spent on the **compensation and expenses** of other service providers in capital appeals. Payment above this amount requires a showing that the excess was necessary to provide fair compensation for services of an unusual character and duration. See 18 U.S.C. § 3599(g)(2). Service providers in capital cases submit their claims on the CJA 31 form.

X. Public Disclosure of CJA Vouchers or Payment Information

Judicial Conference policy requires the disclosure of voucher payments in non-capital cases upon the court's approval of the voucher claim. See CJA Guidelines, § 520.10, CJA Form 19. Disclosure of voucher payments in capital cases is not required until, "after disposition of the petition." See 18 U.S.C. § 3599(g)(3).